THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25506 OF 2001

DATED : 5th October, 2005.

Between:

M/s. Gudivada Labour Contract Co-operative
Society Ltd., (Regd. No.Y-405), rep. by its President
Cheeli Dada Rao, S/o. Cheel Chowdhary, aged
About 53 years, r/o. Mallayyapalem Village,
Gudivada Rural Mandal, Krishna District.
… Petitioner

And

1. Deputy Registrar of Cooperative Societies,
Gudivada, Krishna district and others. … Respondents

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ORDER :

The writ petitioner is a Labour Contract Co-operative Society incorporated under the provisions of the A.P Co-operative Societies Act, 1964, with an object to provide manual work to its members to eke out their livelihood from such work allotted by the petitioner society. In the area of operation of the petitioner society, the godowns of the Food Corporation of India are situated in Mallaiah Palem, Gudivada Rural Mandal, Krishna District. The Food Corporation of India is in the requirement of 155 handling/manual workers every day and sometimes basing on its transitional requirement more than 155 persons are also required. It is stated that the petitioner society was asked by the 2nd respondent – Food Corporation of India to submit a list of 155 members who will be regularly engaged on direct payment system by the Food Corporation of India. Accordingly, the petitioner society submitted a list consisting of 155 senior members based on the Employees Provident Fund Contributions. After consultation with the 1st respondent - Deputy Registrar of Co-operative Societies, Gudivada about the genuineness of the said 155 members, the 2nd respondent has accepted the list submitted by the petitioner society and consequently the enlisted 155 members are working in the godowns of the 2nd respondent – Food Corporation of India on Direct Payment System w.e.f. 2-2-2000. While so, the respondents 4 to 25 herein filed W.P.Nos.23547 of 2000 and 21542 of 2001 with a prayer that the petitioner society shall provide work to them also in the godowns of the 2nd respondent – Food Corporation of India. Having taken note of the fact that the representation dated 24-3-2001 submitted by the petitioners therein was pending before the Registrar of Co-operative Societies, this Court, without expressing any opinion on merits as to the claim of the petitioners therein, disposed of the said writ petitions with the following order :

> *"In view of the above circumstances, the Registrar of Co-operative Societies shall take into consideration the representation of the petitioners which was forwarded by the Government and dispose of the same in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order."*

In pursuance of the said order, the 1st respondent – Deputy Registrar of Co-operative Societies, Gudivada passed an order dated 1-12-2001 directing the petitioner society to treat the applicants (respondents 4 to 25 herein) as members of the society.

It is alleged that on the basis of the said order, the respondents 4 to 25 were forcing themselves on the Food Corporation of India resulting in physical violence and clashes among the two sets of workers i.e., the enlisted 155 members and respondents 4 to 25 herein. The case of the petitioner society is that since the 2nd respondent Corporation is making direct payment to the enlisted 155 members, the remaining members of the society are not entitled to claim distribution of the handling and transport work in the godowns of the Food Corporation of India. It is also contended that the petitioner society has no active role at all after the introduction of the Direct Payment System by the Corporation. Hence, the present Writ Petition seeking a declaration that the proceedings of the 1st respondent, dated 1-12-2001 are arbitrary and illegal and for a further direction to the respondents 1 to 3 to allow the enlisted 155 workers only in the godowns on Direct Payment System.

The learned Counsel for the writ petitioner contends that the 1st respondent committed a grave error in directing the petitioner society to admit the respondents 4 to 25 as members without recording any reasons for accepting the request of the respondents 4 to 25. That apart, the said order which was passed without any notice or hearing to the petitioner society is in violation of principles of the natural justice. It is further contended that since the society has already requested for liquidation, the petitioner society is unable to provide work to the members who are in addition to the enlisted 155 members.

On the other hand, the learned Government Pleader for Co-operation appearing for the 1st respondent contends that the impugned order was passed only after hearing the Chair-person of the petitioner society and since nothing was placed before the 1st respondent to show that the respondents 4 to 25 are non-members of the society, the impugned order was rightly passed and the same does not warrant any interference.

The learned Counsel appearing for the Food Corporation of India submitted that so far as the induction of handling labour and ancillary labour is concerned, the Corporation has to follow the procedure in terms of the Circular of the Head-

Quarters, dated 5-11-1997 and accordingly the 2nd respondent has inducted a total number of 155 handling labourers and 48 ancillary labourers into the Direct Payment System on the basis of the enquiry report submitted by the Committee of the Officers of the Corporation which was in tune with the seniority of members allotted by the Regional Provident Fund Commissioner. The said procedure followed by the Corporation is in accordance with law and therefore the 1st respondent ought not to have passed the impugned order which was not only without notice to the 2nd respondent Corporation but also not in consonance with the directions of this Court in W.P.Nos.23547 of 2000 and 21542 of 2001.

The learned Counsel appearing for the respondents 4 to 25 contended that in spite of several opportunities afforded, the petitioner society failed to produce the relevant record before the 1st respondent. That apart, the President of the petitioner society during the course of hearing admitted that the respondents 4 to 25 are members of the society. On the basis of the said admission, the 1st respondent has rightly passed the impugned order dated 1-12-2001. The learned Counsel has also contended that the alleged seniority of the enlisted 155 members is not correct and that the work was entrusted to the said members only at the discretion of the President of the petitioner society and therefore the impugned order is unassailable an does not warrant any interference.

At the outset, it is to be noted that the fact that the respondents 4 to 25 are also the members of the petitioner society is not in dispute. However, the case of the petitioner is that the enlistment of 155 members of the petitioner society for entrusting the work by the Food Corporation of India under Direct Payment System was done strictly in accordance with the *inter se* seniority among the members of the society. On the other hand, the contention of the respondents 4 to 25 is that the alleged seniority is without any basis and the enlistment was made deliberately by the President of the Society to benefit some of the members. Thus, it is clear that the controversy is nothing but a dispute touching the business of the society among its members. That apart, the questions involved are purely disputed questions of fact which can be decided only on verification of the relevant records. In the circumstances, the dispute requires to be decided by invoking the appropriate

remedy as provided under the statute. As a matter of fact, this Court while disposing of the earlier writ petitions has already directed the Registrar of the Co-operative Societies to consider the grievances of the petitioners therein (the respondents 4 to 25 in this writ petition) and to pass appropriate orders in accordance with law. It is not in dispute that in pursuance of the said order, the enquiry was taken up by the 1st respondent which culminated in the impugned order dated 1-12-2001. Though the writ petitioner alleged that the 1st respondent failed to afford an opportunity to it before passing the impugned order, it is to be noted that in the counter-affidavit the 1st respondent has explained that the petitioner society was issued a notice calling upon to produce the records to settle the seniority of the members and pursuant thereto, the Chair-person of the society attended the hearing on 13-11-2001 and gave his statement stating that the records of the society were eaten by the white-ants. Since the petitioner failed to produce the Admission Register and Minutes Book of the society, it was deemed that the seniority of the respondents 4 to 25 was not disturbed and accordingly the impugned order was passed directing the petitioner society to admit the respondents 4 to 25 as members of the society if they are not members of the society. Thus, it is clear that the petitioner society was afforded a reasonable opportunity before passing the impugned order. However, on the face of it, the impugned order is cryptic being devoid of any reasons in support of its conclusion. The order is also vague and absolutely no finding was recorded as to the claim of the respondents 4 to 25 that they are entitled to be inducted in the Food Corporation of India under Direct Payment System.

It is also relevant to note that the Senior Regional Manager of Food Corporation of India in his counter-affidavit has categorically stated that the requirement of handling and ancillary labour in the Depot of the Corporation at Gudivada was assessed strictly in accordance with the circular issued by the head-quarters of the Corporation dated 5-11-1997 with regard to implementation of Direct Payment System. The handling and ancillary labourers can be inducted only as per the assessed strength of each depot. So far as Gudivada depot is concerned, the required handling labour was assessed as '155' and the ancillary labour was assessed as '48'. When the petitioner society was requested to furnish the seniority list of the handling labour and ancillary labour, they could not do so. After waiting for 40 days, a letter was addressed to the Asst. Manager (Depot), Food Corporation of

India, Buffer Storage Complex, Gudivada by the 3rd respondent to contact Deputy Registrar of Co-operative Society, Gudivada, to furnish the seniority list, for which the Asst. Manager (Depot) has replied that the Deputy Registrar was not having the workers' seniority list as there were a number of cases pending in the High Court regarding the seniority of the labour society. In this context, a committee of officers were appointed by the 3rd respondent for the purpose of identification of eligible members to induct in the Direct Payment System, who had submitted a report after detailed enquiry on the basis of payment of EPF as prescribed by the Regional Provident Fund Commissioner, Guntur who had allotted serial numbers to the Society Members. Finally, as per the proceedings of the 3rd respondent No.S&C 17(2)/98-Cont., dated 31-1-2000 and 20-3-2000 a total number of 155 handling labourers and 48 ancillary labourers were inducted into the Direct Payment System on 'Minimum Guaranteed Wage' basis strictly in accordance with the guidelines contained in the Head-quarters Circular No.IR(L)/31(21)/97, dated 5-11-1997.

In the light of the averments in the counter-affidavit filed by the Corporation explaining the procedure followed by them in inducting the members of the petitioner society into the Direct Payment System, I am of the view that the 1st respondent, before passing the impugned order, ought to have made a detailed enquiry into the correctness of the procedure followed after due notice to the Corporation and after verification of all the relevant records. The 1st respondent was not justified in arriving at a conclusion only on the ground that the petitioner society failed to produce the Admission Register and Minutes Book of the society.

That apart, as expressed above, in the absence of any finding as to the *inter se* seniority among the members of the petitioner society, particularly without adjudicating the claim of the respondents 4 to 25 as to their entitlement for induction into the Corporation under Direct Payment System, it cannot be said that the 1st respondent has settled the dispute in conformity with the directions of this Court in W.P.Nos.23547 of 2000 and 21542 of 2001. As a matter of fact, the only direction under the impugned order was to provide membership to the applicants in the

society, which must be held to be superfluous since they were already members of the petitioner society.

In the circumstances, I deem it appropriate to direct reconsideration of the matter in the light of the observations made above.

Accordingly, the impugned order is set aside and the Writ Petition is disposed of with a direction to the 1st respondent to consider the claims of the respondents 4 to 25 afresh and to pass appropriate orders in accordance with law after due notice to the petitioner society as well as the 155 enlisted members, the Food Corporation of India and particularly the respondents 4 to 25 herein to establish their rival claims. Such exercise shall be completed as expeditiously as possible preferably within a period of eight (8) weeks from the date of receipt of this order. Till such time, the order of the Division Bench in W.A.No.1303 of 2002, dated 22-8-2002 whereunder the Food Corporation of India was granted liberty to engage the workers either from the members of the petitioner society or from the respondents 4 to 25 shall continue.

The Writ Petition is accordingly disposed of. No costs.

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5th October, 2005.

Note:- CC in 3 days.

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